

DRAFT OF MAY 24, 2004, MARKED TO SHOW CHANGES TO

DRAFT OF AUGUST 7, 2003

**AGREEMENT AMONG
THE TRUSTEE FOR NATURAL RESOURCES
FOR THE STATE OF UTAH,
JORDAN VALLEY WATER CONSERVANCY DISTRICT
AND
KENNECOTT UTAH COPPER CORPORATION**

THIS AGREEMENT (this "Agreement"), dated this ___ day of _____, ~~2003~~, 2004, is made among the Trustee for Natural Resources for the State of Utah (the "Trustee"), Jordan Valley Water Conservancy District (the "District") and Kennecott Utah Copper Corporation ("Kennecott").

RECITALS:

1. The Trustee, the District and Kennecott are parties to a Consent Decree dated August 21, 1995 entered in Civil Action No. 86-C-0902G in the United States District Court for the District of Utah and Supporting Document (the "Consent Decree"). As part of the settlement contained in the Consent Decree, Kennecott paid cash (the "Cash Portion") and posted an Irrevocable Letter of Credit (the "Irrevocable Letter of Credit"), both of which are held in a trust fund administered by the Trustee under the Consent Decree (the "Trust Fund").

2. Pursuant to the Consent Decree, the Trust Fund may be used to restore, replace or acquire the equivalent groundwater for the benefit of the public in the area of the southwestern Jordan Valley affected by the groundwater contamination addressed in the Consent Decree (the "Affected Area"). The Affected Area is as defined in the Consent Decree.

3. Kennecott and the District jointly prepared and submitted to the Trustee a proposal for the development and construction of a groundwater extraction and treatment project with groundwater remedial functions (the "Project") which, among other things, will make treated, municipal quality water available to Affected Municipalities in the Affected Area.

4. The Project is described in that certain document entitled "Kennecott Utah Copper Corporation and Jordan Valley Water Conservancy District Proposal to the Utah State NRD Trustee and the USEPA CERCLA Remedial Project Manager for a Groundwater Extraction and Treatment Remedial Project in the Southwestern Jordan Valley," dated ~~_____~~, May 25, 2004, which is referred to herein as the "Proposal". A copy of the Proposal and other relevant information have been furnished to, reviewed by and discussed with the Trustee. The Proposal includes this Agreement and the Project Agreement between Kennecott and the District (the "Project Agreement"). The Project Agreement is attached hereto as Exhibit A. The Proposal is as defined in ~~1.30~~1.33 of the Project Agreement and is attached to the Project Agreement as Appendix 2.

5. The Consent Decree requires Kennecott to complete a Remedial Investigation/Feasibility Study ("RI/FS") for the groundwater plume in the Affected Area. In cooperation with the United States Environmental Protection Agency ("EPA") and the Trustee, and oversight from a Technical Review Committee ("TRC") consisting of governmental and non-governmental stakeholders, Kennecott submitted the RI/FS on March 16, 1998. Based on the RI/FS, Kennecott has proposed a final CERCLA remedial plan, which has been approved by EPA, the Trustee and the TRC. The proposed remedial plan incorporates and relies upon relevant components of the Project, including the construction and operation of the Zone A Plant and related facilities, such as the extraction wells used for hydraulic containment of contaminated groundwater. A final CERCLA Record of Decision embracing the proposed remedial plan was issued on December 13, 2000 by EPA. Subsequently, on ~~_____~~, June 23, 2003, EPA issued an "Explanation of Significant Differences" for the selected remedy in the Record of Decision.

6. ~~Contemporaneously with the execution of this Agreement,~~ Kennecott and the District have executed the Project Agreement to implement the Project. Capitalized terms not otherwise defined herein shall have the same meaning as defined in the Project Agreement.

7. As contemplated by, and consistent with the terms of, the Consent Decree, the District and Kennecott seek to utilize the Trust Fund to fund a portion of the Project.

8. The Trustee has agreed to make the Trust Fund available for the Project as is consistent with the terms of the Consent Decree and in accordance with the terms of this Agreement.

9. The Trustee has made the Proposal, the Trustee's preliminary decision to accept the Proposal, and the terms of this Agreement available to relevant stakeholders and the public for review and comment, and has taken such comments into consideration in making its final decision to accept the Proposal and to enter into this Agreement.

10. ~~The State has issued a UPDES Discharge Permit No. _____ to the District for the concentrate from the Zone B Facilities and the Lost Use Facilities.~~

AGREEMENT:

In consideration of the foregoing Recitals, which are declared to be a substantive part of this Agreement, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. PROJECT APPROVAL AND COMMITMENT

A. The Trustee concludes that the Proposal, as implemented by this Agreement and the Project Agreement, complies with the terms of the Consent Decree and hereby approves the Project. In addition, the Trustee agrees to allow the Trust Fund to be utilized for the Project in accordance with this Agreement. The District and Kennecott agree that the Proposal, as implemented by this Agreement and the Project Agreement, complies with the terms of the

Consent Decree and that this Agreement fulfills the Trustee's responsibilities under the Consent Decree.

B. Notwithstanding the terms of the Project Agreement pursuant to which Kennecott agrees to produce Treated Water from the Zone A Plant, the Trustee acknowledges that Kennecott is committing hereunder to produce Municipal Quality Water as defined in the Consent Decree.

C. Subject to and in accordance with the terms and conditions of the Project Agreement and this Agreement:

1. Kennecott agrees to construct and complete the Zone A Plant under the provisions of the Consent Decree Section V.D.2.b. Pursuant to Section II below, Kennecott shall post the Zone A ILC (defined in Section II.A below). At such time as the Zone A Plant is Complete and Operational as described in Section III below, Kennecott covenants and agrees that it shall provide and deliver to the District at least 3500 acre feet of Municipal Quality Water (or portion thereof as provided in Section III.F below) annually on a rolling average basis as provided in Section III.G below, through treatment of contaminated water for a period of forty (40) years after the Zone A Plant is Complete and Operational, subject to the conditions of Section V.D.2.b(i) of the Consent Decree;

2. The District agrees to construct and complete the Zone B Facilities under the provisions of the Consent Decree Section V.D.4. Pursuant to Section II below, Kennecott shall post the Zone B ILC (defined in Section II.A below). The District covenants and agrees that the District will offer for sale to the Affected Municipalities in accordance with the Project Agreement 3500 acre feet of Municipal Quality Water annually from the Zone B Facilities or from other sources available to the District, for a period of forty (40) years after the Zone B Facilities are Complete and Operational or February 1, ~~2009~~2010, whichever is earlier;3 and

3. ~~The District agrees to construct and complete the Lost Use Facilities under the provisions of the Consent Decree Sections V.D.1 and 4. The District covenants and agrees that the District will offer for sale~~ **and provide** to the Affected Municipalities in accordance with the Project Agreement 1,235 acre feet of Municipal Quality Water annually ~~from the Lost Use Facilities or~~ **(the "Lost Use Water") for a period of forty (40) years to restore, replace or provide the equivalent of surface and ground water resources in the Affected Area under Sections V.D.1 and 4 of the Consent Decree. The Lost Use Water shall be in addition to the 7,000 acre feet of water to be produced and made available to the Affected Municipalities annually from the Zone A Plant and the Zone B Facilities, and shall be in addition to the annual quantities of water that the District is currently obligated to deliver to Affected Municipalities under existing contracts. The District intends to produce the Lost Use Water in whole or part from the Lost Use Facilities, but, if the Lost Use Facilities are not constructed or, when constructed, do not produce the full 1,235 acre feet of Lost Use Water in any year, the District shall provide all or the remainder of the Lost Use Water from other sources available to the District, for a period of forty (40) years after. The 40-year period shall commence on the date on which the Lost Use Facilities are Complete and Operational, or February 1, 2010, whichever is earlier.**

D. By entering into this Agreement, the Trustee is not assuming any responsibility of the District or Kennecott under the Project Agreement, and nothing herein shall constitute an approval by the Trustee of any permit or similar approval required for the Project other than as required by the Consent Decree.

II. REPLACEMENT OF IRREVOCABLE LETTER OF CREDIT

A. Within thirty (30) days after execution of this Agreement, Kennecott shall deliver to the Trustee two irrevocable letters of credit in the form attached hereto as Exhibit B, ~~each effective as of September 5, 2003 and~~ each having an initial amount equal to 50% of the adjusted value of Irrevocable Letter of Credit No. LC870-112974 as of such date. Such irrevocable letters of credit, as may be adjusted from time to time as described in this Section and in Sections III and IV below, are collectively referred to herein as the "Replacement ILCs", and individually as the "Replacement ILC", the "Zone A ILC" and the "Zone B ILC", as the context may require.

B. Each of the Replacement ILCs shall increase annually, on its anniversary date, by the average annual Public Treasurers Investment Fund Rate from July 1 to June 30 of the preceding year, compounded annually. Kennecott shall contact the Trustee prior to the anniversary date of the Replacement ILCs to obtain the rate of interest to be applied to the then outstanding amount of the Replacement ILCs. On or before the latter of the anniversary date of the Replacement ILCs or forty ~~five~~ (45) days after receipt of the Trustee's interest rate information, Kennecott shall cause the Replacement ILCs to be increased by the appropriate amount and shall deliver or cause the issuer to deliver to the Trustee evidence of such increase. **For purposes of the increase to be made on the first anniversary date of the Replacement ILCs, such ILCs shall be increased in accordance with the foregoing provisions for the period from September 5, 2003 to the first anniversary date of the Replacement ILCs. The forms of the Replacement ILCs in Exhibit B provide that the issuer is not obligated to increase the amount of such ILCs by greater than ten percent (10%) for each annual increase. If the average annual Public Treasurers Investment Fund Rate determined pursuant to this Section II.B is greater than ten percent (10%) and the issuer does not increase the Replacement ILCs by that amount, Kennecott shall obtain additional letters of credit or other assurances acceptable to the Trustee in its sole discretion for the difference. The Trustee acknowledges that cash equal to such difference is deemed an acceptable additional assurance**

C. Simultaneous with the Trustee's receipt of the Replacement ILCs as provided in Section II.A above, the Trustee and Kennecott shall execute and deliver the notice attached hereto as Exhibit C providing for the release of Irrevocable Letter of Credit No. LC870-112974.

D. If (1) the issuer of a Replacement ILC has notified the Trustee and Kennecott that it elects not to renew the ILC for any additional period **or the term of the ILC is about to expire**, and (2) within 90 days of the issuer's notice, Kennecott obtains substitute letters of credit or other assurances ("new assurance") acceptable to the Trustee in its sole discretion, the Trustee shall immediately (but in any case prior to the expiration date of the Replacement ILC) notify the issuer that the Replacement ILC is released and deliver the original Replacement ILC to the issuer. The Trustee acknowledges that cash, with interest thereon at the PTIF Rate, equal to the outstanding face amount of the Replacement ILC, is deemed an acceptable new assurance. Any

new assurance shall be subject to increase, and shall be held, reduced or released by the Trustee, consistent with the terms of this Agreement. If Kennecott does not obtain a new assurance acceptable to the Trustee as provided herein, the Trustee shall, prior to the expiration date, present the Replacement ILC to the issuer for payment.

E. The forms of the Replacement ILCs in Exhibit B provide for a maturity date of February 1, 2015. Kennecott shall give the Trustee notice on or before October 1, 2014 of the maturity date of the Replacement ILCs, if one or both of Replacement ILCs remain outstanding at that time. At least thirty (30) days prior to the maturity date, Kennecott may satisfy its obligation under each outstanding Replacement ILC by paying the outstanding amount of such ILC to the Trustee (in which case the Trustee and Kennecott shall immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Replacement ILC), or if Kennecott fails to timely satisfy its obligation under the Replacement ILC by such payment to the Trustee, the Trustee may present for payment the Replacement ILC.

III. COMPLETION OF ZONE A PLANT

A. The term “Completion” with regard to the Zone A Plant means that Kennecott has received an operating permit from the Utah Department of Environmental Quality, Division of Drinking Water under its normal rules and regulations. In issuing an operating permit, the Division of Drinking Water shall evaluate whether the output of the Zone A Plant is and can be maintained at an amount equal to or greater than 3.13 millions of gallons per day of Municipal Quality Water (averaged over a 30 day period)(the “Design Capacity”) and shall include that determination in the operating permit. If the Division of Drinking Water concludes that the output of the Zone A Plant is not or cannot be maintained at the Design Capacity, it will include a determination of the reduced output capacity in the operating permit. Any disputes concerning the issuance of the operating permit shall be resolved pursuant to the Rules of the Utah Drinking Water Board and the Utah Administrative Procedures Act, Utah Code Annotated Sections 63-46b-1 et seq. At any time after Completion, Kennecott may notify the Trustee that the Zone A Plant has reached Completion. A copy of such notice shall be sent to the District.

B. After verifying that an operating permit has been issued by the Division of Drinking Water and within fifteen (15) days following notice to the Trustee by Kennecott that the Zone A Plant has reached Completion, the Trustee shall issue a notice to Kennecott, with a copy to the District, acknowledging the Completion. The Trustee’s notice to Kennecott and the District that the Zone A Plant has reached Completion shall constitute the final determination that the Zone A Plant is “Complete and Operational” as defined in the Project Agreement. The date of the Trustee’s notice shall be the “Zone A Completion Date”.

C. If the operating permit described in Section III.A reflects that the Zone A Plant is and can be maintained at the Design Capacity, upon the Zone A Completion Date, the Zone A ILC shall be reduced by an amount equal to 60% of the face amount of the Zone A ILC, and within fifteen (15) days following the Zone A Completion Date, the Trustee and Kennecott shall execute and deliver to the issuer the instructions for the reduction of the Zone A ILC as set forth in such ILC. If the operating permit described in Section III.A reflects a reduced capacity output for the Zone A Plant, the provisions of Section III.F. shall apply.

D. If the operating permit described in Section III.A reflects that the Zone A Plant is and can be maintained at the Design Capacity, (1) on each of the first four anniversary dates of the Zone A Completion Date, the Zone A ILC shall be reduced in an amount equal to 15% of the face amount of the Zone A ILC (taking into account any reductions then due), and within fifteen (15) days following the Zone A Completion Date, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone A ILC for the reduction of such ILC; and (2) on the fifth anniversary, the Zone A ILC shall be reduced to zero, and the Trustee and Kennecott shall immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Zone A ILC. If the operating permit described in Section III.A reflects a reduced capacity output for the Zone A Plant, the provisions of Section III.F- shall apply.

E. For the purposes of interest calculations, reductions or cancellation pursuant to this Section that do not take place on an anniversary date of the Zone A ILC, shall be deemed to have occurred on the last previous anniversary date.

F. If on the Zone A Completion Date, the Division of Drinking Water determines pursuant to Section III. A that the output of the Zone A Plant averaged over a 30-day period is not equal to or greater than 3.13 millions of gallons per day of Municipal Quality Water, the provisions of Exhibit D attached hereto shall apply and supercede Sections III.C and D above for purposes of calculating the reductions to the Zone A ILC.

G. For all purposes of this Agreement,

1. It is understood that the Zone A Plant's annual production for the Operational Period shall be determined in accordance with this Section III.G, and that the Design Capacity is only relevant for the Division of Drinking Water's determination at the time the operating permit is first issued under Section III.A;

2. After the fifth anniversary of the Zone A Completion Date, the 3500 acre feet (or portion thereof if the provisions of Section III.F are applicable) of Municipal Quality Water per year for the Zone A Plant shall be calculated on each anniversary of the Zone A Completion Date on a rolling average basis over a five-year period by adding the actual annual production for each of the previous five years in which the Zone A Plant was operating and dividing such sum by 5; provided that (a) the actual annual production shall not be less than 3150 acre feet (or ratable portion thereof if the provisions of Section III.F are applicable) and (b) no more than 3850 acre feet (or ratable portion thereof if the provisions of Section III.F are applicable) may be included in the annual production. Prior to the fifth anniversary of the Zone A Completion Date, production from the Zone A Plant shall not be less than 3150 acre feet (or ratable portion thereof if the provisions of Section III.F are applicable); and

3. If an event of a force majeure occurs affecting the Zone A Plant, the anniversary date for calculating the 3500 acre feet (or portion thereof if the provisions of Section III.F are applicable) shall become the date the period of force majeure ends, the rolling average calculation shall be based on the actual annual production for the five-year period ~~(or shorter period, if the plant has not been operating for five years)~~ before the event of force majeure, and the period of force majeure shall not be included in the five-year period.

IV. COMPLETION OF ZONE B FACILITIES

A. The term “Completion” with regard to the Zone B Facilities means that the District has received an operating permit from the Utah Department of Environmental Quality, Division of Drinking Water under its normal rules and regulations. Any disputes concerning the issuance of the operating permit shall be resolved pursuant to the Rules of the Utah Drinking Water Board and the Utah Administrative Procedures Act, Utah Code Annotated Sections 63-46b-1 et seq. When the Zone B Facilities have reached Completion, the District shall notify the Trustee. A copy of such notice shall be sent to Kennecott.

B. After verifying that an operating permit has been issued by the Division of Drinking Water and within fifteen (15) days following receipt of the notice from the District, the Trustee shall issue a notice to Kennecott and the District acknowledging that the Zone B Facilities have reached Completion, which notice shall constitute the final determination that the facilities are “Complete and Operational” as defined by the Project Agreement.

C. Under the Project Agreement, the District has agreed to a water delivery commitment from the Zone B Facilities or other sources to satisfy its obligation under Section I.C.2 above that is commensurate with the funding of the construction of the Zone B Facilities as described in Sections 7 and 9.2 of the Project Agreement. Releases of the Zone B ILC shall coincide with the District’s commitment in accordance with this Section IV. For purposes hereof, the following definitions shall apply:

Zone B Funds means the total amount of the Zone B Design, Construction and Construction Retainage Funds fixed under Section 9.2.b of the Project Agreement, plus interest at the PTIF Rate through the date of the determination.

Zone B Payments means the cumulative total of all amounts released to the District by Kennecott under Section 9.2 of the Project Agreement through the date of the determination.

Zone B Adjustment Factor means as of any given date, the total amount of Zone B Payments divided by the total amount of Zone B Funds as of the date of the determination.

D. The District shall have no obligation to make water available to Affected Municipalities under Section I.C.2, above, until the Zone B Adjustment Factor reaches 50%. When the Zone B Adjustment Factor reaches 50%, the District shall have a firm obligation to make 1750 acre feet of water available per year under Section I.C.2. Thereafter, with each increase of 10% of the Zone B Adjustment Factor, the District’s firm obligation to make water available under Section I.C.2 shall increase by 350 acre feet per year until the District’s total commitment reaches 3500 acre feet per year. Notwithstanding any other provision hereof, if the Zone B Adjustment Factor has not reached 100% on or before January 31, ~~2009~~2010, (1) there shall be no further increases in the Zone B Adjustment Factor, (2) the District’s obligation to make water available to Affected Municipalities under Section I.C.2 shall be fixed at the level in effect on January 31, ~~2009~~2010, and (iii) except for reductions to the Zone B ILC then due, the Trustee shall have no further obligation to reduce the Zone B ILC under Section IV.F.

E. At such time as Zone B Adjustment Factor is 50%, Kennecott shall provide the Trustee with a certificate of the chief financial officer of Kennecott (“Officer’s Certificate”)

reflecting the total Zone B Payments and Zone B Funds to date. A copy of the Officer's Certificate shall be sent to the District. Immediately following the Trustee's receipt of the Officer's Certificate, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone B ILC for the reduction of such ILC in an amount equal to the Zone B Adjustment Factor times the then-outstanding face amount of the Zone B ILC.

F. Following each additional increase in the Zone B Adjustment Factor of 10% or more, Kennecott shall deliver to the Trustee (with a copy to the District) an additional Officer's Certificate reflecting the total Zone B Payments and Zone B Funds to date. Immediately following the Trustee's receipt of the Officer's Certificate, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone B ILC for the reduction of such ILC in an amount equal to the product of the Zone B Funds multiplied by the Zone B Adjustment Factor, less all prior reductions to the Zone B ILC. Such adjustments shall continue to be made until the Zone B ILC reaches zero. Immediately after the Zone B ILC reaches zero, the Trustee and Kennecott shall execute and deliver to the issuer the notice of cancellation of the Zone B ILC as set forth in such ILC.

G. For the purposes of interest calculation for the Zone B ILC, reductions or cancellation pursuant to this Section that do not take place on an anniversary date of the Zone B ILC shall be deemed to have occurred on the last previous anniversary date.

V. COMPLETION OF LOST USE FACILITIES

A. The term "Completion" with regard to the Lost Use Facilities means that the District has received an operating permit from the Utah Department of Environmental Quality, Division of Drinking Water under its normal rules and regulations. Any disputes concerning the issuance of the operating permit shall be resolved pursuant to the Rules of the Utah Drinking Water Board and the Utah Administrative Procedures Act, Utah Code Annotated Sections 63-46b-1 et seq. When the Lost Use Facilities have reached Completion, the District shall notify the Trustee. A copy of such notice shall be sent to Kennecott.

B. After verifying that an operating permit has been issued by the Division of Drinking Water and within fifteen (15) days following receipt of the notice from the District, the Trustee shall issue a notice to Kennecott and the District acknowledging that the Lost Use Facilities have reached Completion, which notice shall constitute the final determination that the facilities are "Complete and Operational" as defined by the Project Agreement.

VI. PAYMENTS FROM CASH PORTION OF TRUST FUND

A. Upon execution of this Agreement, the Trustee shall segregate the Cash Portion of the Trust Fund into the following separate funds in order to facilitate the design, construction and operation of the Lost Use Facilities:

1. Assessment Costs and Oversight and Management Fund:
~~\$759,430.15~~ \$8152,000.

2. Design Fund: \$1,000,000.

3. Construction Fund: ~~\$6,100,000.~~ Initially \$6,100,000, subject to reduction under Section VI.E.

4. Construction Retainage Fund: ~~\$321,000.~~ Initially \$321,000, subject to reduction under Section VI.E.

5. Operation and Maintenance Fund: ~~Entire~~ Initially the entire remaining balance of the Cash Portion of the Trust Fund on the date of segregation, subject to reduction under Section VI.E.

6. Other Source Fund: Initially zero, subject to increase under Section VI.E.

B. The Trustee, in the Trustee's discretion, may commingle the separate funds for investment purposes, provided that the Trustee separately accounts for each fund and the interest accruing thereon. The Trustee shall retain the Assessment Costs and Oversight and Management Fund and any accrued interest thereon to help defray the cost of assessing damages and overseeing the implementation of this Agreement.

C. The Design Fund shall be released to the District in twelve (12) equal monthly installments commencing thirty (30) days after execution of this Agreement. All accrued interest on the Design Fund shall be released to the District with the last payment from the Design Fund.

D. The District shall give notice to the Trustee, with a copy to Kennecott, when the design of the Lost Use Facilities has been completed, including the design capacity of the Lost Use Facilities (the "Lost Use Design Capacity"), the date on which the District intends to commence construction of the Lost Use Facilities (the "Construction Commencement Date") and the name of a proposed engineering firm which will certify the progress of construction (the "Project Engineer"). The Trustee shall advise the District within fifteen (15) days of receipt of such notice whether the proposed engineering firm is acceptable, and if not, the District and the Trustee shall select another mutually acceptable engineering firm to serve as the Project Engineer for purposes of this Section VI.

E. If the Lost Use Design Capacity is less than 1,235 acre feet per year of treated water, then the Construction Fund, the Construction Retainage Fund and the Operation and Maintenance Fund shall each be reduced to an amount which bears the same proportion to the original amount for such fund stated in Section VI.A as the Lost Use Design Capacity bears to 1,235 acre feet per year, and the remainder of each fund shall be transferred to the Other Source Fund.

F. ~~E.~~ The Construction Fund, including interest accruing through the Construction Commencement Date, shall be released to the District in eighteen (18) equal monthly installments commencing on the Construction Commencement Date.

G. ~~F.~~ The District shall provide to the Trustee a certificate from the Project Engineer, with a copy to Kennecott, when construction of the Lost Use Facilities is twenty-five percent (25%) complete, when construction is fifty percent (50%) complete, and when construction is seventy-five percent (75%) complete. If a certificate is not delivered to the Trustee on or before

the due date of the fifth (5th) payment to the District from the Construction Fund for the 25% certificate, before the due date of the tenth (10th) payment for the 50% certificate, and before the due date of the fifteenth (15th) payment for the 75% certificate, then further payments to the District from the Construction Fund shall be suspended until such time as the respective certificate is delivered, and the schedule for the remaining payments shall be extended by the period of the suspension.

H. ~~G.~~—The Construction Retainage Fund, together with all interest accrued on the Construction Fund after the Construction Commencement Date and with all accrued interest on the Construction Retainage Fund, shall be released to the District when the Lost Use Facilities are Complete and Operational.

I. **The Operation and Maintenance Fund, including all accrued interest, shall be released to the District beginning one (1) year following the date on which the Lost Use Facilities are Complete and Operational as follows:**

~~H.——Notwithstanding the foregoing, if at any time prior to the time when the Lost Use Facilities are determined to be Complete and Operational the District elects not to proceed further with the construction of the Lost Use Facilities or is otherwise unable to satisfy the Complete and Operational test on or before January 31, 2009, the District shall refund to the Trustee all amounts paid to the District under this section, together with interest on such amounts at the PTIF Rate, and the District's obligations to provide water to the Affected Municipalities under Section I.C.3, above shall terminate.~~

~~I.——The Operation and Maintenance Fund (i.e., the entire remaining balance of the Cash Portion of the Trust Fund, including all accrued interest), shall be released to the District beginning one (1) year following the date on which the Lost Use Facilities are Complete and Operational as follows:~~

As soon as reasonably practicable following each anniversary on which the Lost Use Facilities are Complete and Operational, the District shall provide to the Trustee (with a copy to Kennebecott) an accounting of the actual operation and maintenance costs incurred for the Lost Use Facilities during the preceding year. The Trustee shall reimburse the District for such amount from the Operation and Maintenance Fund, up to the entire remaining balance of the fund. At such time as the Operation and Maintenance Fund has been reduced to zero, the District shall have no further obligation to report Lost Use operation and maintenance costs to the Trustee, and the Trustee shall have no further obligation to pay operation and maintenance costs associated with the Lost Use Facilities.

J. **Notwithstanding the foregoing, if at any time prior to the time when the Lost Use Facilities are determined to be Complete and Operational the District elects not to proceed further with the construction of the Lost Use Facilities or if the District is otherwise unable to satisfy the Complete and Operational test for the Lost Use Facilities on or before February 1, 2010, then (i) the District shall refund to the Trustee all amounts paid to the District under this section, together with interest on such amounts at the PTIF Rate, (ii) the Trustee shall deposit the refunded amount in the Other Source Fund, and (iii) the Trustee shall transfer the remaining balance, if any, of the Design Fund, the**

Construction Fund, the Construction Retainage Fund and the Operation and Maintenance Fund to the Other Source Fund. However, in no event shall the District's obligations to provide Lost Use Water to the Affected Municipalities under Section I.C.3 above, terminate.

K. Upon the District providing to the Trustee (i) evidence of a legal obligation to provide all or the remainder of the Lost Use Water to Affected Municipalities for the forty-year period and (ii) evidence that the water will be from sources as described in Section I.C.3, the Other Source Fund, including accrued interest, any amounts transferred to the Other Source Fund under Section VI.E and any refunds under Section VI.J deposited in the Other Source Fund prior to the date of the first disbursement, shall be released to the District in five (5) equal annual installments commencing sixty (60) days after the date on which the District first delivers Lost Use Water to Affected Municipalities. All remaining accrued interest, any amounts transferred to the Other Source Fund under Section VI.E and any refunds under Section VI.J deposited in the Other Source Fund after the date of the first disbursement shall be released to the District with the last payment from the Other Source Fund. The District shall provide to the Trustee annually (with a copy to Kennecott) an accounting of the Lost Use Water provided during the preceding year.

VII. TERMINATION; REMEDIES

A. Termination of this Agreement. Unless the parties otherwise agree, this Agreement shall terminate as to the applicable party at the earlier of the satisfaction of the party's obligations under Section I.C above or at such time as the obligations of the party under Section I.C terminate as provided in this Agreement.

B. Remedies. Except as provided in this Agreement, if a party fails to perform any obligation under this Agreement, the other party or parties shall have all remedies available to them in law and equity, including injunctive relief and the right to seek a judicial termination of this Agreement as to the non-performing party. In addition, the parties acknowledge that after the applicable plant or facilities are Complete and Operational, money damages may be an inadequate remedy for the Trustee and the Trustee shall be entitled to seek specific performance against:

1. Kennecott, if a final judicial determination is made that Kennecott has failed to perform its obligations under Section I.C.1; or

2. ~~the~~The District, if a final judicial determination is made that the District has failed to perform its obligations under Sections I.C.2 and 3.

C. Other Rights Not Affected. Nothing in this Agreement changes or modifies in any way (1) any provisions of the Consent Decree, including, without limitation, Sections VI, VII, and VIII thereof, or (2) the rights or claims, if any, of any third parties or any defenses to such claims as may be asserted by a party to this Agreement. In addition, except as provided in this Agreement, nothing in this Agreement changes or modifies the rights, claims or defenses of any party to this Agreement, including, but not limited to, the right to challenge the failure of any

agency of the State to issue a permit, including the failure of the Division of Drinking Water to issue an operating permit under Sections III, IV, or V.

D. Responsible Party. The Trustee's claims, if any, with regard to the Zone A Plant and related facilities and operations above-of the Zone A Meter Station shall be asserted against Kennecott. The Trustee's claims, if any, with regard to the Zone A Plant permeate after delivery by Kennecott to the Zone A Meter Station, the Zone B Facilities and the Lost Use Facilities shall be asserted against the District. In no event shall the Trustee hold Kennecott responsible for the District's performance or non-performance under this Agreement, or hold the District responsible for Kennecott's performance or non-performance under this Agreement.

E. Force Majeure. Except as provided in this subsection, the performance of or compliance with any of the covenants, conditions or obligations contained in this Agreement, either expressed or implied, on the part of a party shall be excused, and failure to perform or comply with such covenant, condition or obligation shall not be deemed to be a breach of this Agreement and shall not create any liability on the part of the affected party, during any period in which performance is prevented, in whole or part, by causes herein termed "force majeure". For purposes of this Agreement, the term "force majeure" shall mean events beyond the control of a party that cannot be avoided through reasonable actions by the party, including extreme weather conditions; earthquakes or cave-ins; unavailability of labor, transportation, materials, machinery, equipment, supplies, utilities, or services; serious accidents; breakdown of major equipment, machinery, or facilities; injunctions issued by any court; changes in laws, regulations or permit conditions or requirements; inability to obtain licenses, permits or other authorizations or renewals on reasonable terms in spite of reasonable efforts to do so; groundwater contamination caused by a third party that affects the water quality of the feed water; curtailment or suspension of activities to remedy or avoid violation of environmental laws; acts of war or conditions arising out of or attributable to war; riot; civil strife; fire; explosion; or any similar cause beyond the reasonable control of the party declaring force majeure. Without limiting the foregoing, the emergency shutdowns described in Sections 4.10, 8.7 and 8.8 of the Project Agreement also shall constitute events of force majeure under this Agreement. If a party desires to invoke the provisions of this subsection, the invoking party shall give prompt notice to the other parties of the commencement of the circumstances giving rise to such force majeure. The time for discharging the party's obligations with respect to the prevented performance shall be extended for the period of force majeure, provided that the party invoking force majeure uses reasonable efforts to eliminate the condition of force majeure as soon as reasonably practicable. If a condition of force majeure delays the District's construction of the Lost Use Facilities, the Trustee also shall be excused from further funding under Section VI until the condition of force majeure is eliminated, and the schedule of payments under Section VI shall be modified accordingly.

VIII. ~~Project Agreement Termination~~ PROJECT AGREEMENT TERMINATION

A. Notices. A copy of any notice of termination given by Kennecott or the District to the other party under the Project Agreement shall be provided simultaneously to the Trustee.

B. Zone A Plant.

1. In the event that the Project Agreement terminates in its entirety or as to the Zone A Plant as provided therein but Kennecott is otherwise prepared to proceed with the Zone A Plant and associated facilities described in the Proposal as approved by this Agreement or pursuant to another project consistent with the Consent Decree, Kennecott shall notify the Trustee of its election to proceed within thirty (30) days after the effective date of the notice to terminate all of the Project Agreement or that part of the Project Agreement pertaining to the Zone A Plant, and the District shall have no further obligation with respect thereto. The Trustee shall notify Kennecott of its approval or denial of approval within ten (10) days after receipt of Kennecott's notice. The Trustee agrees to cooperate with Kennecott to adapt the Proposal or develop another project that is consistent with the terms of the Consent Decree, provided that approval for Kennecott to proceed is at the reasonable discretion of the Trustee. If Kennecott elects to proceed and the Trustee has issued an approval, the Zone A ILC shall not be presented for payment by the Trustee, and the other provisions of this Agreement, including those relating to the reductions of the Zone A ILC, shall continue to apply unless Kennecott is otherwise determined not to be in material compliance with this Agreement. If Kennecott does not elect to proceed with the Zone A Plant or another project or the Trustee does not approve Kennecott's proposal to proceed with the Zone A Plant or another project, then the provisions of Section VIII.B.2 below shall apply.

2. Unless the parties otherwise agree, if the Project Agreement terminates as to the Zone A Plant before it is Complete and Operational, and Kennecott does not elect to proceed, or the Trustee has not approved Kennecott's proposal to proceed as provided in Section VIII.B.1 above, (a) the obligations of Kennecott under this Agreement shall terminate; and (b) within sixty (60) days after the effective date of the notice to terminate the Project Agreement in its entirety or as to the Zone A Plant, Kennecott may satisfy its obligation under the Zone A ILC by paying the outstanding amount of such ILC to the Trustee (in which case the Trustee and Kennecott shall immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Zone A ILC), or if Kennecott fails to timely satisfy its obligation under the Zone A ILC by such payment to the Trustee, the Trustee may present for payment the outstanding amount of the Zone A ILC. The payment of the outstanding amount of the Zone A ILC by Kennecott or the payment of the Zone A ILC by the issuer following presentment by the Trustee shall be the exclusive remedy of the Trustee hereunder except that this provision is not intended to modify the reservation of rights in Sections VI and VII of the Consent Decree. If the Project Agreement terminates after the Zone A Plant is Complete and Operational, and the Trustee approves an alternative proposal for delivery of Municipal Quality Water to an M & I purveyor consistent with the provisions of the Consent Decree, the Zone A ILC shall not be presented for payment by the Trustee, and the other provisions of this Agreement, including those relating to the reductions of the Zone A ILC and the obligations of Kennecott under Section I.C.1, shall continue to apply unless Kennecott is otherwise determined not to be in material compliance with this Agreement. If the Project Agreement terminates after the Zone A Plant is Complete and Operational, and Kennecott and the Trustee have not agreed on an alternative proposal for delivery of Municipal Quality Water consistent with the Consent Decree, the Trustee may present for payment any remaining amount of the Zone A ILC unless Kennecott has previously paid to the Trustee the outstanding amount of the Zone A ILC after taking into account any reductions then due (in which case the Trustee and Kennecott shall

immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Zone A ILC), and, subject to Section VII.B, Kennecott's obligations under this Agreement shall terminate.

3. If the Zone A Plant is not Complete and Operational by January 31, 2009, the Trustee may terminate this Agreement as to the Zone A Plant and Kennecott's obligations under this Agreement shall terminate. Within ten (10) business days thereafter, Kennecott may satisfy its obligation under the Zone A ILC by paying the outstanding amount of such ILC to the Trustee (in which case the Trustee and Kennecott shall immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Zone A ILC), or if Kennecott fails to timely satisfy its obligation under the Zone A ILC by such payment to the Trustee, the Trustee may present for payment the Zone A ILC. The payment of the outstanding amount of the Zone A ILC by Kennecott or the payment of the Zone A ILC by the issuer following presentment by the Trustee shall be the exclusive remedy of the Trustee hereunder except that this provision is not intended to modify the reservation of rights in Sections VI and VII of the Consent Decree.

C. Zone B Facilities.

1. If the Project Agreement or this Agreement terminates as to the Zone B Facilities before Kennecott has paid to the District 50% of the Zone B Funds, (a) the obligations of the District under Section I.C.2 shall terminate; and (b) the Trustee shall be entitled to funds received from Kennecott or the issuer as provided in Section VIII.C.5 below equal to the then outstanding face amount of the Zone B ILC for use consistent with the terms of the Consent Decree.

2. If, after the District has accrued a firm obligation to make at least 1750 acre feet of water available to Affected Municipalities under Section IV.D (i.e., after Kennecott has released 50% of the Zone B Funds to the District) but before the Zone B ILC has been fully released without payment thereunder, either (i) Kennecott is in material breach of its obligation to release funds to the District under Section 9.2.d, 9.2.e or 9.2.f of the Project Agreement, or (ii) the Project Agreement or this Agreement terminates as to the Zone B Facilities, then the District may elect, by notice to the Trustee and Kennecott, to increase its firm commitment to make water available under Section I.C.2 to the full 3500 acre feet. If the District so elects to increase its firm commitment to make water available under Section I.C.2 to the full 3500 acre feet, then (a) the Trustee shall (unless the District is otherwise determined not to be in material compliance with this Agreement) disburse to the District funds received from Kennecott or the issuer as provided in Section VIII.C.5, below, equal to the then outstanding face amount of the Zone B ILC after taking into account any reductions to the ILC then due, and (b) the District's obligation under Section I.C.2 shall be fixed at 3500 acre feet of water per year.

3. If the Project Agreement or this Agreement terminates as to the Zone B Facilities after the District has accrued a firm obligation to make at least 1750 acre feet of water available to Affected Municipalities under Section IV.D, but before the Zone B ILC has been fully released without payment thereunder, but the District does not elect to increase its firm obligation to make water available under Section I.C.2 to the full 3500 acre feet per year as described in Section VIII.C.2, or if the District is in breach of any of its material obligations

under this Agreement, then (a) the District shall be deemed to have waived any right it has to utilize the Zone B ILC or to receive any further Zone B funds from Kennecott (except as otherwise provided in the Project Agreement) or the Trustee; (b) the District shall have no obligation to complete the Zone B Facilities; (c) the District's obligation under Section I.C.2 shall be fixed at an amount equal to the Zone B Adjustment Factor as of the date of the termination multiplied by 3500; and (d) the Trustee shall be entitled to funds received from Kennecott or the issuer as provided in Section VIII.C.5 below equal to the then outstanding face amount of the Zone B ILC (after taking into account any reductions to the ILC then due) for use consistent with the terms of the Consent Decree.

4. If the Project Agreement terminates as to the Zone B Facilities after the District's firm obligation under Section I.C.2 above has reached 3500 acre feet of water per year and the Zone B ILC has been fully released without payment thereunder, the District's obligation under Section I.C.2 shall continue to be 3500 acre feet/year and all other provisions of this Agreement relating to the Zone B Facilities shall remain in effect.

5. Within ten (10) business days after the effective date of the notice to terminate the Project Agreement or this Agreement, Kennecott may satisfy its obligation under the Zone B ILC by paying the outstanding amount of such ILC (after taking into account any reductions to the ILC then due) to the Trustee (in which case the Trustee and Kennecott shall immediately execute and deliver to the issuer, with a copy to the District, the notice of cancellation as set forth in the Zone B ILC), or if Kennecott fails to timely satisfy its obligation under the Zone B ILC by such payment to the Trustee, the Trustee may present to the issuer the Zone B ILC for payment. The payment of the outstanding amount of the Zone B ILC by Kennecott or the payment of the Zone B ILC by the issuer following presentment by the Trustee shall be the exclusive remedy of the Trustee hereunder except that this provision is not intended to modify the reservation of rights in Sections VI and VII of the Consent Decree.

IX. GENERAL

A. Notices. All notices, payments and other required communications under this Agreement ("notices") to a party shall be in writing and shall be addressed as follows:

In the case of the Trustee:

Executive Director
Utah Dept. of Environmental Quality
Attention: Dianne R. Nielson, Ph.D.
168 North 1950 West
Salt Lake City, Utah 84116
Fax: 801-536-0061

With a copy to:

Director
Utah Division of Environmental Response and Remediation
168 North 1950 West

Salt Lake City, Utah 84116
Fax: 801-359-8853

In the case of the District:

Jordan Valley Water Conservancy District
Attention: David Ovard, General Manager
8215 South 1300 West
West Jordan, Utah 84088
Fax: 801-565-8917

In the case of Kennecott:

Kennecott Utah Copper Corporation
Attention: Manager, Strategic Resources
For personal delivery:
8200 South 9600 West
Bingham Canyon, UT 84006

For mail:
8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044
Fax: 801-569-7192

With a copy to:

Kennecott Utah Copper Corporation
Attention: Manager, Environmental and Sustainable Development Policies and Systems
For personal delivery:
8200 South 9600 West
Bingham Canyon, UT 84006

For mail:
South 8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044
Fax: 801-569-7179

With a copy to:

Kennecott Utah Copper Corporation
Attention: General Counsel
For personal delivery:
8200 South 9600 West

Bingham Canyon, UT 84006

For mail:
South 8315 West 3595 South
P.O. Box 6001
Magna, Utah 84044
Fax : 801-569-6807

All notices shall be given by personal delivery, facsimile or registered mail, return receipt requested. The notices shall be effective and shall be deemed delivered (1) in the case of personal delivery, on the date of delivery if delivered during normal business hours, and if not delivered during normal business hours, on the next business day following delivery, (2) in the case of facsimile, on the next business day following receipt of the facsimile, and (3) in the case of registered mail, on the next business day after actual receipt. A party may change its address by notice to the other parties.

B. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, and this Agreement shall not be construed to relieve any party from any obligations under such laws. This Agreement does not relieve in any way the responsibilities of Kennecott and the District to obtain all required permits and approvals for implementation of the Proposal and to pay the fees and costs of those permits and approvals as provided by State and local laws.

C. Reporting; Inspection Rights. Until the Zone A Plant is Complete and Operational, Kennecott shall provide to the Trustee, with a copy to the District, a quarterly report on the progress of the construction of the plant. Until the Zone B Facilities and Lost Use Facilities are Complete and Operational, the District shall provide to the Trustee, with a copy to Kennecott, a quarterly report on the progress of the construction of the facilities. Following the Complete and Operational determination, Kennecott or the District, as applicable, shall provide to the Trustee, with a copy to the other party, an annual report on the operations of the applicable plant or facilities. Upon reasonable advance notice and during normal business hours, the Trustee or its designated representatives shall have access to and the right to inspect the Bingham Canyon Plant and the Jordan Valley Membrane Plant as defined in the Project Agreement. The exercise of such right shall not interfere with construction and/or operations, and shall be subject to safety regulations imposed by Kennecott or the District. Nothing in this Agreement is intended to limit or modify the inspection authorities of the Department of Environmental Quality as provided by law.

D. No Third Party Beneficiary. Nothing in this Agreement shall confer any rights on any person or entity other than the parties hereto and their respective successors and assigns.

E. Waivers. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon breach hereof shall not constitute a waiver of any other provision of this Agreement or limit a party's right thereafter to enforce any provision or exercise any remedy.

F. Entire Agreement. This Agreement, together with all exhibits hereto, contains the entire understanding of the parties and supersedes all prior agreements and understandings among the parties with regard to the subject matter hereof, other than the Consent Decree, and (as between the District and Kennecott) the Project Agreement. The parties acknowledge that this Agreement is intended to implement the terms of the Consent Decree. This Agreement shall be binding on and inure to the benefit of the respective successors and assigns of the parties.

G. Conflicting Provisions. In the event of any conflict between this Agreement and the Project Agreement, (1) with respect to obligations as between Kennecott and the District, the terms of the Project Agreement shall be controlling, and (2) with respect to obligations as between the Trustee and Kennecott or the Trustee and the District, the terms of this Agreement shall be controlling. In the event of any conflict between this Agreement and the Proposal or any exhibit attached hereto (other than the Project Agreement), the terms of this Agreement shall be controlling.

H. Amendments. No amendment or modification of this Agreement shall be valid unless made in writing and duly executed by the parties.

I. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah.

J. Authority. Each party represents that it has the authority to sign this Agreement and that the person executing this Agreement on its behalf is fully authorized to do so.

K. Liability and Indemnity.

1. Nothing contained in this Agreement shall be deemed to create a partnership, agency relationship, or fiduciary relationship among the Trustee and Kennecott and/or the District.

2. For purposes of this Section IX.K, the term “indemnified party” or “indemnified parties” shall mean the Trustee and the Trustee’s “employees”, as defined in Section 63-30~~d-2~~102(2) of the ~~Utah~~ Governmental Immunity Act of Utah, Utah Code Ann. (1953) §§ 63-30~~d-1~~101, et seq. (the “Act”).

3. Kennecott shall defend, indemnify, and hold harmless the indemnified parties from and against (a) any and all claims arising directly or indirectly from or out of Kennecott’s construction or operation of the Zone A Plant, Zone A Collection Facilities and Zone A Permeate Facilities or other actions taken by Kennecott under the Project Agreement or this Agreement, and (b) any and all Environmental Claims (as defined in the Project Agreement) arising directly or indirectly from or out of or relating to the contamination and environmental conditions which are described in the Consent Decree or the Remedial Investigation/Feasibility Study prepared by Kennecott in connection with the CERCLA remedial response to the contaminated groundwater plume in the Affected Area.

4. The District shall defend, indemnify, and hold harmless the indemnified parties from and against any and all claims arising directly or indirectly from or out of the

District's construction and operation of the Zone B Facilities and Lost Use Facilities or other actions taken by the District under the Project Agreement or this Agreement.-

5. Notwithstanding the foregoing, the obligations of Kennecott and the District to defend, indemnify and hold harmless the indemnified parties shall not apply to any claim arising directly or indirectly from or out of actions of the indemnified parties that would result in (a) liability to the State of Utah under Section 63-30~~d-40~~301 of the Act by filing a claim as provided under the Act, or (b) individual liability for actions not covered by the Act as indicated in Sections 63-30~~d-36~~136 and -~~37~~137 of the Act, as determined in a court of law.

6. The indemnified party shall promptly notify Kennecott or the District, as applicable, when it becomes aware of any claim covered by the foregoing indemnification, and shall reasonably cooperate in the defense of any such claim. At such time as Kennecott or the District, as applicable, has assumed the defense of any claim covered by the foregoing indemnification, it shall have exclusive control over, and shall be solely responsible for the cost and selection of counsel and experts and management of the case, and it shall have no obligation to pay for fees of any consultants, counsel or other experts that each indemnified party may incur.

7. In defending the indemnified parties, Kennecott and the District shall be entitled to assert any and all defenses on behalf of the indemnified parties that may be available to the indemnified parties, including without limitation any defenses available to the indemnified parties under the Act.

8. Kennecott and the District agree that by participating in this Agreement, the Trustee shall not have and does not assume any liabilities or responsibilities of Kennecott or the District under any Environmental Laws or other laws nor does the Trustee assume any liabilities or responsibilities of Kennecott or the District for activities or actions taken or decisions made by Kennecott or the District pursuant to this Agreement or the Project Agreement.

9. Notwithstanding the obligations of Kennecott and the District to defend, indemnify and hold harmless the indemnified parties as set forth in subparagraph (3) and (4), nothing in this Agreement shall adversely affect any immunity from suit, or any right, privilege, claim or defense, which the indemnified parties (or Kennecott or the District on behalf of the indemnified parties), the District or the District's employees, officers and trustees may assert under state or federal law, including but not limited to the Act. All claims against the indemnified parties and/or the District or the District's employees, officers and trustees are subject to the provisions of the Act, which Act controls all procedures and limitations in connection with any such claim of liability.

~~L.~~ ~~X-Oversight Committee.~~ The Trustee shall appoint a representative to be a non-voting member of the Oversight Committee established under Section 3.1 of the Project Agreement.

THE TRUSTEE:

The Trustee for Natural Resources for the State of
Utah

By: _____
Its: _____

THE DISTRICT:

Jordan Valley Water Conservancy District

By: _____
Its: _____

KENNECOTT:

Kennecott Utah Copper Corporation

By: _____
Its: _____

Attachments:

Exhibit A – Project Agreement

Exhibit B – Form of Zone A ILC and Zone B ILC

Exhibit C - Notice for Release of Irrevocable Letter of Credit

Exhibit D – Zone A Reduced Capacity Calculations

EXHIBIT A – PROJECT AGREEMENT

EXHIBIT B – FORM OF ZONE A ILC AND ZONE B ILC

ZONE A ILC

Irrevocable Standby Letter of Credit No._____

<u>Beneficiary:</u>	<u>Applicant:</u>
<u>Executive Director</u>	<u>Kennecott Utah Copper Corporation</u>
<u>Utah State Department of Environmental</u>	<u>8315 West 3595 South</u>
<u>Quality</u>	<u>PO Box 6001</u>
<u>As Trustee for the State of Utah</u>	<u>Magna, UT 84044-6001</u>
<u>168 North 1950 West</u>	
<u>PO Box 144810</u>	<u>Amount: USD ,000.00</u>
<u>Salt Lake City, UT 84114-4810</u>	<u>Hundred</u>
	<u>Thousand and 00/100's U.S. Dollars</u>

Date of Expiry:_____

Place of Expiry: 401 Linden Street,
Winston-Salem, NC

Gentlemen:

Establishment of Letter of Credit/Right of Beneficiary to Draw Down:

We hereby establish our Irrevocable Letter of Credit No. _____ in favor of the Beneficiary, available by drafts at sight drawn on Wachovia Bank National Association, duly endorsed on the reverse thereof, and documents as described below, presented by regular mail or by overnight courier sent to Wachovia Bank National Association, 401 Linden Street, Winston-Salem, NC 27101, Attn: Standby Letter of Credit Unit. This Letter of Credit shall be effective upon our receipt of the notice of release of Irrevocable Standby Letter of Credit No. LC870-112974.

The Beneficiary shall be entitled to draw down on the entire outstanding amount of this Letter of Credit (less any reductions then due) upon submission of drafts at sight drawn on Wachovia Bank National Association, duly endorsed on the reverse thereof accompanied by the signed original of this Letter of Credit and a signed and dated statement from the Executive Director of the Utah State Department of Environmental Quality, as the Trustee for the State of Utah, in the following form:

“The undersigned hereby certifies that, as contemplated by Section ILD, VIILB or paragraph 7 of Exhibit D [select applicable provision] of the State Agreement, Kennecott has not paid to the undersigned, or otherwise provided new

assurances to the undersigned in, the amount described therein. As a result, the Beneficiary is entitled to the entire outstanding amount under Letter of Credit No. _____, after taking into account any reductions then due, and hereby presents for payment such Letter of Credit, the signed original of which is attached.”

Upon payment to the Beneficiary of the entire outstanding amount of this Letter of Credit (less any reductions then due) pursuant to the above certification, the Bank shall have no further obligation to the Beneficiary hereunder.

Term of Letter of Credit:

It is a condition of this Letter of Credit that it shall be deemed automatically extended for one year from the present or any future expiration date hereof (the “Anniversary Date”), unless 120 days prior to such date the Bank shall notify the Beneficiary and the Applicant, in writing, by certified mail at the above mentioned addresses, that the Bank elects not to consider this Letter of Credit renewed for any such additional period. In no event shall this Letter of Credit be extended pursuant to this provision beyond February 1, 2015.

Annual Increases affecting Letter of Credit:

We are informed that the Applicant has agreed with the Beneficiary to increase this Letter of Credit on an annual basis at the Public Treasurers Investment Fund (“PTIF”) Rate in accordance with the terms of the State Agreement. As a result, each year the Applicant shall notify the Bank, in writing, of the amount by which this Letter of Credit shall increase but, in no event, shall the Bank be obligated to increase the amount of the Letter of Credit by more than ten percent (10%) of the undrawn amount of the Letter of Credit immediately preceding the notification of an increase. Within seven (7) business days following receipt of such notice, the Bank shall confirm in writing to the Beneficiary and the Applicant at the above addresses (1) that such amount has been added to this Letter of Credit as of its Anniversary Date and (2) the revised total amount that may be drawn under this Letter of Credit. This increase, effective on the Anniversary Date, shall not take effect until the Bank has confirmed the increase, in writing, as described above. If by the Anniversary Date of this Letter of Credit, the Bank has not received the notice stating the amount of the annual increase, this Letter of Credit shall automatically be amended to increase the total amount that may be drawn hereunder by an amount equal to three percent (3%) of the undrawn amount as of the Anniversary Date.

Reductions to Letter of Credit:

Prior to its expiration, this Letter of Credit may be amended from time to time, in order to reduce the aggregate amount which may be drawn under this Letter of Credit, in accordance with written requests for amendment signed and dated by the Executive Director of the Utah State Department of Environmental Quality, as the Trustee for the State of Utah and the President or a Vice President and Treasurer or Assistant Treasurer

of Kennecott Utah Copper Corporation, in one of the following forms, and in the case of B., accompanied by the signed original of this Letter of Credit:

A. "The undersigned hereby certify that, as contemplated by Section III.C, D or F [select applicable section] of the State Agreement, Letter of Credit No. _____ shall be reduced by \$ _____ as of _____, 200 (being the Zone A Completion Date or the anniversary thereof or other agreed date)."

B. "The undersigned hereby certify that, as contemplated by Section III.D, VIII.B or paragraph 7 of Exhibit D [select applicable section] of the State Agreement, Letter of Credit No. _____ is hereby released. Attached is the signed original of such Letter of Credit."

Within seven (7) business days following receipt of any one of the above certifications, the Bank shall confirm in writing to the Beneficiary and the Applicant at the above addresses: (1) in the case of A. above, the revised total amount that may be drawn under this Letter of Credit, and (2) in the case of B. above, that this Letter of Credit has expired and is cancelled, and the Bank shall have no further obligation to the Beneficiary hereunder.

Independence:

This standby letter of credit sets forth in full the terms of our undertaking which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

Miscellaneous:

Each draft hereunder must bear upon its face the clause "Drawn under Letter of Credit No. _____, dated _____, 2004. The total of this draft does not exceed USD _____."

The Bank hereby agrees with the Beneficiary and the Applicant that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at the Bank's above-mentioned office, on a regular business day, before 5:00 PM Eastern Time, on or before _____, 20 or any automatic extension of such date.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) ICC Publication No. 500, unless such customs and practices are specifically altered herein.

We are informed that This Letter of Credit is issued pursuant to the requirements of an Agreement among the Beneficiary, Applicant and Jordan Valley Water Conservancy District dated _____, 2004 (the "State Agreement"). Capitalized terms used herein without definition shall have the meaning set forth in the State Agreement.

Very truly yours,

Wachovia Bank National Association

By: _____

Authorized Signature

Please direct any correspondence, including drawing or inquiry quoting our
reference number to:

Wachovia Bank National Association
401 Linden Street
Winston-Salem, NC 27101
Attn: Standby Letter of Credit Unit

ZONE B ILC

Irrevocable Standby Letter of Credit No.

<u>Beneficiary:</u>	<u>Applicant:</u>
<u>Executive Director</u>	<u>Kennecott Utah Copper Corporation</u>
<u>Utah State Department of Environmental</u>	<u>8315 West 3595 South</u>
<u>Quality</u>	<u>PO Box 6001</u>
<u>As Trustee for the State of Utah</u>	<u>Magna, UT 84044-6001</u>
<u>168 North 1950 West</u>	
<u>PO Box 144810</u>	<u>Amount: USD ,000.00</u>
<u>Salt Lake City, UT 84114-4810</u>	<u>Hundred</u>
	<u>Thousand and 00/100's U.S. Dollars</u>

Date of Expiry:

Place of Expiry: 401 Linden Street,
Winston-Salem, NC

Gentlemen:

Establishment of Letter of Credit/Right of Beneficiary to Draw Down:

We hereby establish our Irrevocable Letter of Credit No. _____ in favor of the Beneficiary, available by drafts at sight drawn on Wachovia Bank National Association, duly endorsed on the reverse thereof, and documents as described below, presented by regular mail or by overnight courier sent to Wachovia Bank National Association, 401 Linden Street, Winston-Salem, NC 27101, Attn: Standby Letter of Credit Unit. This Letter of Credit shall be effective upon our receipt of the notice of release of Irrevocable Standby Letter of Credit No. LC870-112974.

The Beneficiary shall be entitled to draw down on the entire outstanding amount of this Letter of Credit (less any reductions then due) upon submission of drafts at sight drawn on Wachovia Bank National Association, duly endorsed on the reverse thereof accompanied by the signed original of this Letter of Credit and a signed and dated statement from the Executive Director of the Utah State Department of Environmental Quality, as the Trustee for the State of Utah, in the following form:

"The undersigned hereby certifies that, as contemplated by Section II.D, VIII.C.1, VIII.C.2, VIII.C.3 or VIII.C.5 [select applicable section] of the State Agreement, Kennecott has not paid to the undersigned, or otherwise provided new assurances to the undersigned in, the amount described therein. As a result, the Beneficiary is entitled to the entire outstanding amount under Letter of Credit No. _____, after taking into

account any reductions then due, and hereby presents for payment such Letter of Credit, the signed original of which is attached.”

Upon payment to the Beneficiary of the entire outstanding amount of this Letter of Credit (less any reductions then due) pursuant to the above certification, the Bank shall have no further obligation to the Beneficiary hereunder.

Term of Letter of Credit:

It is a condition of this Letter of Credit that it shall be deemed automatically extended for one year from the present or any future expiration date hereof (the “Anniversary Date”), unless 120 days prior to such date the Bank shall notify the Beneficiary and the Applicant, in writing, by certified mail at the above mentioned addresses, that the Bank elects not to consider this Letter of Credit renewed for any such additional period. In no event shall this Letter of Credit be extended pursuant to this provision beyond February 1, 2015.

Annual Increases affecting Letter of Credit:

We are informed that the Applicant has agreed with the Beneficiary to increase this Letter of Credit on an annual basis at the Public Treasurers Investment Fund (“PTIF”) Rate in accordance with the terms of the State Agreement. As a result, each year the Applicant shall notify the Bank, in writing, of the amount by which this Letter of Credit shall increase but, in no event, shall the Bank be obligated to increase the amount of the Letter of Credit by more than ten percent (10%) of the undrawn amount of the Letter of Credit immediately preceding the notification of an increase. Within seven (7) business days following receipt of such notice, the Bank shall confirm in writing to the Beneficiary and the Applicant at the above addresses (1) that such amount has been added to this Letter of Credit as of its Anniversary Date and (2) the revised total amount that may be drawn under this Letter of Credit. This increase, effective on the Anniversary Date, shall not take effect until the Bank has confirmed the increase, in writing, as described above. If by the Anniversary Date of this Letter of Credit, the Bank has not received the notice stating the amount of the annual increase, this Letter of Credit shall automatically be amended to increase the total amount that may be drawn hereunder by an amount equal to three percent (3%) of the undrawn amount as of the Anniversary Date.

Reductions to Letter of Credit:

Prior to its expiration, this Letter of Credit may be amended from time to time, in order to reduce the aggregate amount which may be drawn under this Letter of Credit, in accordance with written requests for amendment signed and dated by the Executive Director of the Utah State Department of Environmental Quality, as the Trustee for the State of Utah and the President or a Vice President and Treasurer or Assistant Treasurer of Kennecott Utah Copper Corporation, in one of the following forms, and in the case of B., accompanied by the signed original of this Letter of Credit:

A. "The undersigned hereby certify that, as contemplated by Section IV.E or IV.F [select applicable section] of the State Agreement, Letter of Credit No. _____ shall be reduced by \$ _____, as of _____, 200 ."

B. "The undersigned hereby certify that, as contemplated by Section IV.F or VIII.C [select applicable section] of the State Agreement, Letter of Credit No. _____ is hereby released. Attached is the signed original of such Letter of Credit."

Within seven (7) business days following receipt of any one of the above certifications, the Bank shall confirm in writing to the Beneficiary and the Applicant at the above addresses: (1) in the case of A. above, the revised total amount that may be drawn under this Letter of Credit, and (2) in the case of B. above, that this Letter of Credit has expired and is cancelled, and the Bank shall have no further obligation to the Beneficiary hereunder.

Independence:

This standby letter of credit sets forth in full the terms of our undertaking which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

Miscellaneous:

Each draft hereunder must bear upon its face the clause "Drawn under Letter of Credit No. _____, dated _____, 2004. The total of this draft does not exceed USD _____."

The Bank hereby agrees with the Beneficiary and the Applicant that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at the Bank's above-mentioned office, on a regular business day, before 5:00 PM Eastern Time, on or before _____, 20____ or any automatic extension of such date.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision) ICC Publication No. 500, unless such customs and practices are specifically altered herein.

We are informed that This Letter of Credit is issued pursuant to the requirements of an Agreement among the Beneficiary, Applicant and Jordan Valley Water Conservancy District dated _____, 2004 (the "State Agreement"). Capitalized terms used herein without definition shall have the meaning set forth in the State Agreement.

Very truly yours,

Wachovia Bank National Association

By: _____

Authorized Signature

Please direct any correspondence, including drawing or inquiry quoting our reference

number to:

Wachovia Bank National Association

401 Linden Street

Winston-Salem, NC 27101

Attn: Standby Letter of Credit Unit

EXHIBIT C - NOTICE FOR RELEASE OF IRREVOCABLE LETTER OF CREDIT

, 2004

BY COURIER

Wachovia Bank National Association
401 Linden Street
Winston-Salem, North Carolina 27101
Attention: Standby Letter of Credit Unit

Re: Irrevocable Letter of Credit
No. LC870-112974

Gentlemen:

Reference is made to the Irrevocable Letter of Credit No. LC870-112974 ("ILC") issued in favor of the Trustee for the State of Utah. Capitalized terms used herein without definition shall have the meaning set forth in the ILC.

This letter shall constitute notice by the Beneficiary and Kennecott Utah Copper Corporation ("Kennecott") that the ILC is amended to reduce the aggregate amount that may be drawn under the ILC to zero. The Beneficiary further certifies that Kennecott has filed with the Beneficiary Irrevocable Standby Letters of Credit Nos. _____ and _____, issued by Wachovia, in place of the ILC, and that Irrevocable Letter of Credit No. LC870-112974 is hereby released.

Enclosed for your records is the released ILC. If you have any questions, please contact Jack Welch of Kennecott at 801-252-3526.

Trustee for the State of Utah

By:
Dianne R. Nielson, Executive Director
Utah Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114

Kennecott Utah Copper Corporation

By:
William Champion, President
3595 South 8315 West
Magna, Utah 84044

EXHIBIT D - ZONE A REDUCED CAPACITY CALCULATIONS

(This Exhibit is only applicable if, pursuant to Section III.A of the Agreement, the Division of Drinking Water issues the operating permit reflecting a reduced capacity output for the Zone A Plant.)

1. Upon the Zone A Completion Date, an initial value (the “Performance Factor”) shall be calculated by dividing the Zone A Plant Output by 3.13. The “Zone A Plant Output” shall mean the output of the Zone A Plant as determined by the Division of Drinking Water pursuant to Section III.A of the Agreement measured in millions of gallons per day of Municipal Quality Water, averaged over a 30-day period. In no event shall the initial Performance Factor exceed 1. The Zone A ILC shall then be multiplied by the initial Performance Factor, and such product shall be referred to as the “Amount Available for Reduction”. The remaining balance of the Zone A ILC shall be referred to as the “Unsuspending Portion”. Immediately following the foregoing calculations, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone A ILC for the reduction of such ILC in an amount equal to 60% of the Amount Available for Reduction. The remaining balance of the Amount Available for Reduction (i.e., 40%) shall constitute the “Operating Balance”.

2. If at any time within five years of the Zone A Completion Date, Kennecott can demonstrate to the Division of Drinking Water an increase in the Zone A Plant Output, or Kennecott elects to increase the Performance Factor pursuant to paragraph 3 of this Exhibit, upon notice to the Trustee Kennecott may nominate a new Performance Factor, greater than the previous value but not to exceed 1, calculated by dividing the then current Zone A Plant Output (together with any water provided pursuant to paragraph 3 below, if applicable) by 3.13. The new Performance Factor shall take effect at the next anniversary of the Zone A Completion Date, at which time a further amount of the Unsuspending Portion of the Zone A ILC shall be allocated to the Amount Available for Reduction equal to the product of:

$$\frac{(\text{new PF} - \text{previous PF})}{(1 - \text{previous PF})} \times \text{Unsuspending Portion}$$

[“PF” means “Performance Factor”]

Immediately thereafter, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone A ILC for the reduction of such ILC in an amount equal to 60% of the new Amount Available for Reduction. The remaining balance (i.e., 40% of the new Amount Available for Reduction) shall be added to the Operating Balance.

3. Upon the Zone A Completion Date, and at any time within 5 years thereafter, Kennecott, with the approval of and in the sole discretion of the Trustee, may elect to increase the Performance Factor (but not to more than 1) by providing additional Municipal Quality Water from an alternative source but consistent with Section V.D of the Consent Decree. In no event may any Performance Factor be reduced.

4. Prior to the fifth anniversary of the Zone A Completion Date, Kennecott's annual obligation under Section I.C.1 shall be equal to the product of the then current Performance Factor multiplied by 3500. Following the fifth anniversary of the Zone A Completion Date, Kennecott's remaining annual obligation under Section I.C.1 shall be equal to the product of the final Performance Factor multiplied by 3500 (the final Performance Factor being the Zone A Plant Output as of such fifth anniversary divided by 3.13). Notwithstanding the foregoing or any other provision of this Exhibit D, the rolling average provisions of Section III.G of the Agreement shall apply to the calculations under Section I.C.1 of the Agreement.

5. On each of the first four anniversary dates of the Zone A Completion Date, and immediately following any adjustments pursuant to this Exhibit, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone A ILC for the reduction of such ILC in an amount equal to the 15% of the then-prevailing Operating Balance. On the fifth anniversary, the Trustee and Kennecott shall execute and deliver to the issuer the instructions as set forth in the Zone A ILC for the reduction of such ILC in an amount equal to the remaining Operating Balance; provided however, that in the event the Zone A Plant Output (together with any water provided pursuant to paragraph 3 above) is less than the final Performance Factor times 3.13, the remaining Operating Balance will be added back to the Unsuspended Portion.

6. Interest in accordance with Section II.B of this Agreement shall continue to accrue on the Operating Balance, and shall be added to the Operating Balance. Interest in accordance with Section II.B shall continue to accrue on the Unsuspended Portion and shall be added to the Unsuspended Portion. For the purposes of interest calculation, reductions or cancellation pursuant to this Exhibit that do not take place on an anniversary date of the Zone A ILC, shall be deemed to have occurred on the last previous anniversary date.

7. Immediately following the fifth anniversary of the Zone A Completion Date, and having taken into account any reductions then becoming due, the Trustee shall be entitled to present for payment the Zone A ILC to the extent of the remaining balance of the Unsuspended Portion, unless Kennecott satisfies its obligation thereunder by paying such amount to the Trustee (in which case the Trustee and Kennecott shall immediately execute and deliver to the issuer the notice of cancellation as set forth in the Zone A ILC).